



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

JAN 29 2015

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Article Number: 7005 3110 0000 5964 3716

Mr. Don Champion, Owner
Champion Farms, LLC
6793 Champion Road
Clinton, New York 13323

Re: **Administrative Docket No. CWA-02-2015-3029**
Champion Farms, LLC, SPDES Permit No. NYA001344
Clean Water Act Information Request and Administrative Compliance Order

Dear Mr. Champion:


Please find enclosed a combined Information Request and Administrative Compliance Order (together, the "Order"), which the United States Environmental Protection Agency ("EPA") Region 2 is issuing to Champion Farms, LLC ("Champion Farms") pursuant to Sections 308(a) and 309(a) of the Clean Water Act ("CWA"), 33 U.S.C. §§ 1318(a) and 1319(a). The EPA is issuing the Information Request to require Champion Farms to provide specific information regarding the condition of its farmsteads located at 6793 Champion Road in Clinton, New York and at the intersection of Egan Road and McNeil Road in Clinton, New York ("Facility") and the actions needed to attain compliance with the CWA and with the State Pollutant Discharge Elimination System ("SPDES") General Permit for Concentrated Animal Feeding Operations ("CAFOs") General Permit No. GP-04-02 ("CAFO General Permit" or "Permit"). The EPA is issuing the Administrative Compliance Order because Champion Farms has violated and remains in a State of noncompliance with CWA Section 301, 33 U.S.C. § 1311, for failing to comply with the conditions and limitations of the CAFO General Permit.

Enclosed are two originals of the Order. Please acknowledge receipt of the Order on one of the originals and return it by mail in the enclosed envelope. Failure to comply with the enclosed Order may subject Champion Farms to civil or criminal penalties pursuant to Section 309 of the CWA, 33 U.S.C. § 1319.

Also enclosed is the Inspection Report for the inspection of the Facility conducted by the EPA on November 25, 2014.

If you have any questions regarding the enclosed Order, please contact Douglas McKenna, Chief, Water Compliance Branch, at (212) 637-4244.

Sincerely,



Dore LaPosta, Director
Division of Enforcement and Compliance Assistance

Internet Address (URL) • <http://www.epa.gov>

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Enclosures

cc: Joseph DiMura, P.E, Director, Bureau of Water Compliance Programs, NYSDEC
Steven Botsford, Regional Water Engineer, NYSDEC Region 6

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
Region 2
290 Broadway
New York, New York 10007-1866

IN THE MATTER OF:

Champion Farms, LLC
6793 Champion Road
Clinton, New York 13323

SPDES Permit No. NYA001344

Respondent

Proceeding pursuant to §§ 308(a) and 309(a) of the
Clean Water Act, 33 U.S.C. §§ 1318(a) and 1319(a)

**INFORMATION REQUEST AND
ADMINISTRATIVE COMPLIANCE ORDER**

CWA-02-2015-3029

A. STATUTORY AUTHORITY

The following Information Request and Administrative Compliance Order (together the “Order”) are issued pursuant to Sections 308(a) and 309(a) of the Clean Water Act (“CWA”), respectively, 33 U.S.C. §§ 1318(a) and 1319(a). These authorities have been delegated by the Administrator of the United States Environmental Protection Agency (“EPA”) to the Regional Administrator, EPA Region 2 and further delegated to the Director of the Division of Enforcement and Compliance Assistance, EPA Region 2.

1. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), makes it unlawful for any person to discharge any pollutant from a point source to waters of the United States, except, among other things, with the authorization of, and in compliance with, a National Pollutant Discharge Elimination System (“NPDES”) permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.
2. Section 402 of the CWA, 33 U.S.C. § 1342, authorizes the Administrator of the EPA to issue a NPDES permit for the discharge of any pollutant, or combination of pollutants subject to certain requirements of the CWA and conditions which the Administrator determines are necessary. The New York State Department of Environmental Conservation (“NYSDEC”) is the agency with the authority to administer the federal NPDES program in New York pursuant to Section 402(b) of the CWA, 33 U.S.C. § 1342(b). A State Pollutant Discharge Elimination System (“SPDES”) permit is required to be issued to facilities by the NYSDEC for the discharge of pollutants from point sources to navigable waters of the United States. The EPA maintains concurrent enforcement authority with authorized States for violations of the CWA and permits issued by authorized States thereunder.
3. The Administrator of EPA has promulgated 40 C.F.R. § 122.23(a), which requires operators to obtain a NPDES permit for discharges or potential discharges associated with Concentrated Animal Feeding Operations. The regulation at 40 C.F.R. § 122.23 establish requirements for discharges associated with Concentrated Animal Feeding Operations, including all animals or the production of those animals, regardless of the type of animal.

4. "Person" is defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5), to include any individual, corporation, partnership, association or municipality.
5. "Discharge of a pollutant" is defined by Section 502(12) of the CWA, 33 U.S.C. § 1362(12), to include any addition of any pollutant to navigable waters from any point source.
6. "Pollutant" is defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6), to include among other things, solid waste, dredged spoil, rock, sand, cellar dirt, sewage, sewage sludge and industrial, municipal and agricultural waste discharged into water.
7. "Point source" is defined by Section 502(14) of the CWA, 33 U.S.C. § 1362(14), to include any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.
8. "Navigable waters" is defined by Section 502(7) of the CWA, 33 U.S.C. § 1362(7), to include the waters of the United States, and "waters of the United States" is defined at 40 C.F.R. 122.2 to include, among other things, waters which are currently used in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide, and all other waters, the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce.
9. An "animal feeding operation" or "AFO" is defined by 40 C.F.R. § 122.23(b)(1) as a lot or facility where animals have been, are, or will be stabled or confined and fed or maintained for a total of forty-five (45) days or more in any twelve-month period, and where crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.
10. A "concentrated animal feeding operation" or "CAFO" is defined by 40 C.F.R. § 122.23(b)(2) as an AFO that is, *inter alia*, a large CAFO or medium CAFO.
11. A "large CAFO" is defined by 40 C.F.R. § 122.23(b)(4)(i) as an animal feeding operation that stables or confines as many as or more than 700 mature dairy cows, whether milked or dry.
12. A "medium CAFO" is defined by 40 C.F.R. § 122.23(b)(6)(i)(A) as an animal feeding operation that stables or confines within the range of 200 to 699 mature dairy cows, whether milked or dry.
13. "Process wastewater" is defined by 40 C.F.R. § 122.23(b)(7) as water directly or indirectly used in the operation of the AFO for any or all of the following: spillage or overflow from animal or poultry watering systems; washing or cleaning or flushing pens, barns, manure pits, or other AFO facilities; direct contact swimming, washing, or spray cooling of animals; or dust control. Process wastewater also includes any water which comes in contact with any raw materials, products, or byproducts including manure, litter, feed, milk, eggs or bedding.
14. "Production area" is defined by 40 C.F.R. § 122.23(b)(8) as that part of an AFO that includes the animal confinement area, the manure storage area, the raw materials storage area, and the waste containment areas.

15. Section 308(a) of the CWA, 33 U.S.C. § 1318(a), provides, in relevant part, that the Administrator of the EPA may require the owner or operator of any point source to, among other things: establish and maintain such records; make such reports; install, use and maintain such monitoring equipment; sample such effluents; and provide such other information as may reasonably be required to carry out the objective of the CWA.
16. Section 309(a) of the CWA, 33 U.S.C. § 1319(a), authorizes the Administrator of the EPA to issue an order requiring compliance with the CWA when any person is found to be in violation of Section 301 of the CWA, 33 U.S.C. § 1311, for, among other things, violating any condition or limitation contained in a permit issued under Section 402 of the CWA, 33 U.S.C. § 1342.

B. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Director makes the following findings of fact and conclusions of law:

1. Champion Farms, LLC (“Respondent”), owns and operates a dairy farm with at the following locations:
 - a. Main Farm and Old Farmstead at 6793 Champion Road, Clinton, New York; and
 - b. McDonald Farm at the intersection of Egan Road and McNeil Road, Clinton, New York.Collectively, these farmsteads are part of Champion Farms, LLC (“Facility”).
2. Respondent is a person under Sections 502(5) and 502(4) of the CWA, 33 U.S.C. §§ 1362(5) and 1362(4).
3. The Facility confines and feeds or maintains dairy cows for a total of forty-five (45) days or more in any twelve-month period, and neither crops, vegetation, forage growth, nor post-harvest residues are sustained in the normal growing season over any portion of the lot or facility. Therefore, the Facility is an AFO as defined by 40 C.F.R. § 122.23(b)(1), and as that phrase is used in Section 502(14) of the CWA, 33 U.S.C. § 1362(14).
4. The Facility confines approximately 850 mature dairy cows, including dry cows, on-site. Therefore, the Facility is operating as a large CAFO as that term is defined in 40 C.F.R. § 122.23(b)(4)(i).
5. Production area runoff from the Main Farm and Old Farmstead at the Facility discharges to a tributary to the Oriskany Creek which is in the Mohawk River watershed. Production area runoff from the McDonald Farm would flow to a tributary to the Sconondoa Creek which is in the Oneida Lake watershed. The Mohawk River and Oneida Lake are waters of the United States.
6. On June 18, 1999, the NYSDEC issued SPDES General Permit for CAFOs No. GP-99-01, with an effective date of July 1, 1999 and an expiration date of June 30, 2004.
7. On June 24, 2004, the NYSDEC issued SPDES General Permit for CAFOs No. GP-04-02, with an effective date of July 1, 2004 and an expiration date of June 30, 2009 (“CAFO General Permit” or “Permit”). GP-04-02 has been administratively extended.
8. On June 3, 2004, Respondent applied for coverage and received coverage under the CAFO General Permit with the authorization No. NYA001344. On February 1, 2012, Champion Farms,

LLC signed and submitted a NOI and a signed Comprehensive Nutrient Management Plan ("CNMP") Certification to the NYSDEC to obtain coverage as a large CAFO due to a Facility expansion. However, the NYSDEC did not grant coverage as a Large CAFO because the Facility failed to verify that all CNMP practices were fully implemented at the time of submission as required by the CAFO General Permit. Respondent has been covered as a Medium CAFO under the conditions and limitations in the permit at all relevant times addressed by the Order.

9. The CAFO General Permit authorizes Respondent to discharge pollutants associated with stormwater from Facility to waters of the United States, under the conditions and limitations prescribed in the permit.
10. On November 25, 2014, the EPA conducted an inspection of the Champion Farms, LLC Facility.
11. Based on the Inspection findings, the EPA finds that the Respondent has failed to comply with the CWA and the conditions and limitations of the CAFO General Permit, including but not limited to the following:
 - a. Section II.C and VII.B.iii of the CAFO General Permit states that expanded facilities, Medium CAFO to Large CAFO, are eligible for coverage under the terms and conditions of this permit, 30 calendar days from the day of NYSDEC receipt of a complete NOI form and CNMP certification form. Section VII.C.i of the CAFO General Permit states that for existing Large CAFOs or expanded Facilities, Medium CAFO to Large CAFO, the completion schedule shall have all practices fully operational by December 31, 2006. Section VII.C.ii of the CAFO General Permit states that for new Large CAFOs, the CNMP shall have all practices fully operational prior to commencing operation. On February 1, 2012, Champion Farms, LLC signed and submitted a NOI to the NYSDEC to obtain coverage under the CAFO General Permit as a large CAFO due to a Facility expansion. According to the Facility's submitted Annual Compliance Reports, the CNMP has not been fully implemented from 2011 through the present. According to the Facility's 2011 through 2013 Annual Compliance Reports (Appendix D) submitted to the NYSDEC, there are three (3) remaining practices: silage leachate control with two (2) practices and barnyard runoff management with one (1) practice. In addition, the Facility installed a new bunk silo in 2014 with additional plans for silage leachate controls.
 - b. Section VII.A of the CAFO General Permit requires each CAFO to develop and implement a CNMP in accordance with Natural Resources Conservation Service (NRCS) Conservation Practice Standard No. NY312, and good agricultural practices, and should include measures necessary to prevent pollutants in runoff. NRCS Conservation Practice Standard No. 590 Nutrient Management dated January 2013 states that "the minimum spreading setback requirement for down-gradient sinkholes and swallets is a 100-foot setback". The CNMP specifies a 20 foot manure spreading setback from the sinkhole located between Fields MCD1 and MCD2A.
 - c. Section VIII.C.xi of the NYSDEC CAFO General Permit requires that "[c]ollection, storage, and disposal of liquid and solid waste should be managed in accordance with NRCS standards." Specifically, NRCS Conservation Practice Standard No. 312 "Waste Management System" states that "waste" includes polluted runoff such as that from a barnyard or silo, and that all farms with silage will address silage leachate control." NRCS

Conservation Practice Standard No. 313 "Waste Storage Facility" specifies general criteria applicable to all waste storage facilities as well as additional criteria for waste storage ponds. In addition, Section X.G of the CAFO General Permit requires the permittee to, at all times, properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with this permit. At the time of the inspection, inadequate operation and maintenance was observed at the following areas, in violation of Sections VIII.C.xi and X.G of the Permit:

- i. At the time of the inspection, EPA inspector McEathron observed that the plastic lid to the low flow collection tank for Bunk Silo #2 was cracked and immediately adjacent to the cracked lid was a vegetation kill zone and what appeared to be pooling leachate. EPA inspector McEathron observed a vegetative kill zone and pooling leachate down the hillside southeast and towards the Oriskany Creek tributary (see photographs DSCN3332.JPG – DSCN3334.JPG). In addition, the contents of the Bunk Silo were uncovered at the time of the inspection;
 - ii. At the time of the inspection, EPA inspector McEathron observed some feed located on the south side of the collection point adjacent to a road side drainage ditch. The road side ditch continues east to the Oriskany Creek tributary. At the time of the inspection, the bunk silo was not in use for storing feed except for what was left over from when it was in use and had not been cleaned out;
 - iii. The two (2) liquid manure storage structures did not have maximum fill markers at the time of the inspection (see photograph DSCN3328.JPG); and
 - iv. EPA inspector McEathron observed shrubs, overgrown and woody vegetation along the embankments of both manure storage structures at the time of the inspection (see photographs DSCN3329.JPG and DSCN3330.JPG).
- d. Section IX.F of the CAFO General Permit requires the permittee to retain copies of all records and reports required by this permit for a period of at least 5 years from the date reported. Section IX.O.i requires records of inspections to be documented. The Facility has been a permitted CAFO since June 3, 2004, therefore at the time of the inspection, records from November 25, 2009 through November 25, 2014 were required. The following records and reports were not available on-site at the time of the inspection:
- i. Section IX.K of the CAFO General Permit requires permittees to document all precipitation events in excess of 0.3 inches. At the time of the inspection, the Facility did not provide records of precipitation events between November 25, 2009 and December 31, 2011; and
 - ii. Section IX.M of the CAFO General Permit requires permittees to analyze manure every year for Large CAFOs and every two (2) years for medium CAFOs. Subsequent to the inspection, the Facility provided EPA with manure analysis from samples taken November 25, 2014. At the time of the inspection, the Facility was unable to provide records of manure analysis for 2012 and 2013.
- e. Section VII.E of the CAFO General Permit requires the permittee to comply with all provisions of the CNMP. EPA inspector McEathron reviewed manure application records and identified that actual manure application rates exceeded CNMP recommendations in Crop Year 2014 for three (3) fields; Dixon Farm Back, MCD5 and MCD6. Therefore,

manure had been over applied to three (3) fields, inconsistent with CNMP recommendations as detailed below:

- i. Dixon Farm Back (located off Skyline Drive, south of Knoxboro Road and MCD1 and west of Dixon Farm Front): 8,000 gallons/acre recommended and 12,687 gallons/acre applied;
- ii. MCD5 (located on Knoxboro Road, west of MCD4 and east of MCD6 adjacent to an intermittent stream/ditch): 12,000 gallons/acre recommended and 17,250 gallons/acre applied; and
- iii. MCD6 (located on Knoxboro Road, west of MCD5 and east of MCD7, adjacent to an intermittent stream): 12,000 gallons/acre recommended and 13,206 gallons/acre applied.

12. Based upon Paragraphs 1-11 above, the EPA finds that Respondent has violated Section 301 of the CWA, 33 U.S.C. § 1311, for failing to comply with the conditions and limitations in the CAFO General Permit.

C. REQUESTED INFORMATION

Based on the Findings of Fact and Conclusions of Law, above, and pursuant to the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a), Respondent is required to submit to the EPA in writing a written response regarding each of the listed Areas of Concern in the enclosed Inspection Report within **sixty (60) days** of receipt of this Order.

D. ORDERED PROVISIONS

Based upon the foregoing Findings of Fact and Conclusions of Law and pursuant to the authority of Section 309(a) of the CWA, 33 U.S.C. § 1319(a), Respondent is hereby ORDERED to do the following:

1. Respondent shall complete the following items in accordance with the schedule listed below:

<u>Item</u>	<u>Completion Deadline</u>
a. Produce and retain copies of all records and reports required by the CAFO General Permit for a period of at least five (5) years as required by the CAFO General Permit.	Begin Immediately
b. Develop and submit to EPA and NYSDEC a revised CNMP with manure spreading setbacks as specified in NRCS Standard No. 590, including but not limited to a 100-foot setback for down-gradient sinkholes, in accordance with Section VII.A of the CAFO General Permit.	Within thirty (30) calendar days of receipt
c. Comply with all provisions of the CNMP, including manure spreading setbacks and manure application recommendations, as required by Section VII.E of the CAFO General Permit.	Within thirty (30) calendar days of receipt
d. Submit to EPA and NYSDEC quarterly progress reports with updates on the construction of the silage leachate control systems. Reports will be due on a quarterly basis	Quarterly, with the first deadline on March 31, 2015

commencing on March 30, 2015 until the silage leachate control system is in full operation (i.e. reports will be due on March 31, 2015, June 30, 2015, September 30, 2015 and December 31, 2015).	
e. Properly operate and maintain systems of treatment and control in accordance with the CAFO General Permit and NRCS Standards, including but not limited to the following: <ul style="list-style-type: none"> i. Repair the low flow collection tank for Bunk Silo #2 and establish vegetation in the surrounding area; ii. Remove all feed from Bunk Silo #1 when not in use, when in use, ensure that all runoff and leachate is intercepted at the collection point; iii. Maintain vegetation at the two (2) earthen manure storage pits, including mowing and removal of woody, herbaceous vegetation; and iv. Install and maintain depth markers at the two (2) earthen manure storage pits. 	No later than April 30, 2015
f. Fully implement the CNMP, including but not limited to silage leachate collection practices at the Old/Main Farmstead and the McDonald Farm, as required by Section VII.C of the CAFO General Permit.	No later than December 31, 2015
g. Submit to EPA and NYSDEC a written report summarizing the measures taken to comply with each of the Ordered Provision Items a through e above. Such reports shall include photographs documenting measures implemented and costs associated with each Item.	Within seven (7) calendar days after completion deadline for each item.
h. Submit to the NYSDEC, with a copy to EPA, a revised NOI with a revised CNMP certification along with a signed statement that all practices have been completed and the CNMP has been fully implemented as required to gain coverage as a Large CAFO.	No later than January 7, 2016

E. GENERAL PROVISIONS

1. Any information or documents to be submitted by Respondent as part of this Order shall, pursuant to 40 C.F.R. § 122.22, be sent by certified mail or its equivalent to:

Doughlas McKenna, Chief
Water Compliance Branch
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency - Region 2
290 Broadway - 20th floor
New York, NY 10007-1866

and shall be signed by an authorized representative of Respondent, and shall include the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

2. Immediately upon receipt of the original copies of this Order, a responsible official of Respondent shall complete and sign the acknowledgment of receipt of one of the originals of the Order and return said original to the Agency representative named above, in paragraph E.1., in the enclosed envelope.
3. Respondent shall have the opportunity, for a period of twenty (20) days from the effective date of this Order, to confer regarding the Requested Information or Ordered Provisions, with the Agency representative named above, in paragraph E.1.
4. Respondent may seek federal judicial review of the CWA Section 309(a) Administrative Compliance Order pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.
5. This Order does not constitute a waiver from compliance with, or a modification of, the effective terms and conditions of the CWA, its implementing regulations, or any applicable permit, which remain in full force and effect. It is an action taken by the EPA to ensure swift compliance with the CWA, and its issuance shall not be deemed an election by the EPA to forego any civil or criminal actions for penalties, fines, imprisonment, or other appropriate relief under the CWA.
6. Notice is hereby given that failure to provide the information requested in Section C, above, pursuant to CWA Section 308(a), may result in Respondent's liability for civil penalties for each violation of up to \$37,500 per day under Section 309(d) of the CWA, as modified by 40 C.F.R. Part 19. Upon suit by the EPA, the United States District Court may impose such penalties if, after notice and opportunity for a hearing, the Court determines that Respondent has failed to provide any of the Requested Information. You may also be subject to administrative remedies for failing to comply with the Information Request, as provided by Section 309 of the CWA.
7. Notice is also given that failure to complete the provisions ordered in Section D, above, pursuant to CWA Section 309(a), may result in Respondent's liability for civil penalties for each violation of up to \$37,500 per day under Section 309(d) of the CWA, 33 U.S.C. § 1319(d), as modified by 40 C.F.R. Part 19. Upon suit by the EPA, the United States District Court may impose such penalties if, after notice and opportunity for a hearing, the Court determines that Respondent has violated the CWA as described above and failed to comply with the Ordered Provisions. The District Court has the authority to impose separate civil penalties for any violations of the CWA and for any violations of the Administrative Compliance Order.
8. If any provision of this Order is held by a court of competent jurisdiction to be invalid, any surviving provisions shall remain in full force and effect.

9. This Order shall become effective upon the date of execution by the Director, Division of Enforcement and Compliance Assistance.

Dated: JANUARY 29, 2015

Signed: _____

Dore LaPosta, Director
Division of Enforcement and
Compliance Assistance

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2

IN THE MATTER OF:

Champion Farms, LLC
6793 Champion Road
Clinton, New York 13323

SPDES Permit No. NYA001344

Respondent

Proceeding pursuant to §§ 308(a) and 309(a) of
the Clean Water Act, 33 U.S.C. §§ 1318(a) and
1319(a).

**INFORMATION REQUEST AND
ADMINISTRATIVE COMPLIANCE ORDER**

CWA-02-2015-3029

**ACKNOWLEDGMENT OF RECEIPT OF
INFORMATION REQUEST AND ADMINISTRATIVE COMPLIANCE ORDER**

I, _____, an officer of the Respondent, with the title of,
_____, do hereby acknowledge the receipt of copy of the
INFORMATION REQUEST AND ADMINISTRATIVE COMPLIANCE ORDER, CWA-02-
2015-3029.

DATE: _____

SIGNED: _____